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Nos. 567, 664, 665, 666, 667, 668, and 669.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

WILLIAM H. ELLIS, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.

EASTERN DREDGING COMPANY, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.

BAY STATE DREDGING COMPANY
v.
THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

WILLIAM H. ELLIS, PLAINTIFF IN error, *v.* THE UNITED STATES.	No. 567.
EASTERN DREDGING COMPANY, plaintiff in error, *v.* THE UNITED STATES.	Nos. 664, 665, 666.
BAY STATE DREDGING COMPANY, plaintiff in error, *v.* THE UNITED STATES.	Nos. 667, 668, 669.

MOTION TO ADVANCE.

The Attorney-General, on behalf of the United States, respectfully moves the court to advance the above-entitled causes on the docket for hearing during the pending term as one case, for the following reasons:

1. The causes present for consideration four questions arising under the Federal eight-hour law, appended hereto (27 Stat., 340):

(*a*) The constitutionality of the act;

(*b*) The application of the law to dredging work;

(*c*) The meaning of the words "laborers and mechanics," in their application to employees upon dredging vessels;

(*d*) The meaning of the exception "in case of extraordinary emergency."

The constitutional question seems to be disposed of by the case of *Atkin* v. *Kansas* (191 U. S., 207); and the other questions involved, although subject to controversy, are not regarded as difficult and will probably not require extended discussion.

2. The War Department, as appears by the letter appended hereto, is charged with the duty of making contracts involving the payment of about $87,000,000, under the recent river and harbor act; it is in doubt as to the proper construction of the eight-hour law; and it apprehends that bidders will submit their estimates upon the theory that the law applies to dredging work, thereby greatly diminishing the value which the Government could receive under said appropriation if the law should be held inapplicable to such work. The Secretary of War is withholding advertisements for proposals for this work, pending the disposition of this motion.

3. Through various sources the attention of the Government has been called to several hundred instances of alleged violations of this law in dredging work, and it desires to obtain an authoritative decision before incurring the great expense of trying the alleged violators; and it is apprehended, furthermore,

that the courts, so long as these cases remain undecided, will direct that any prosecutions that may be attempted be continued until a final decision is announced by this court.

4. The defendants in these causes are desirous to be informed of their rights and duties at as early an opportunity as possible, and it may be affirmed safely that all contractors engaged upon public works of the United States are particularly anxious for the same result.

5. With the exception of the constitutional question—decided upon a State statute involving a principle similar to that of the Federal statute, in the case above referred to—the questions presented have never been decided by this court, and there is very little authority in the decisions of the lower courts or in the opinions of the Attorneys-General to guide the Executive Departments in enforcing, or the various persons amenable to its provisions in determining, the proper construction of this law.

6. There is a very general public interest in the matter.

Opposing counsel concur in this motion.

CHARLES J. BONAPARTE,
Attorney-General.

APPENDIX.

CHAP. 352. An act relating to the limitation of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the United States Government or of the District of Columbia or any such contractor or subcontractor whose duty it shall be to employ, direct, or control the services of such laborers or mechanics to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency.

SEC. 2. That any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall upon conviction be punished by a fine not to exceed one thousand

dollars or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

SEC. 3. The provisions of this act shall not be so construed as to in any manner apply to or affect contractors or subcontractors, or to limit the hours of daily service of laborers or mechanics engaged upon the public works of the United States or of the District of Columbia for which contracts have been entered into prior to the passage of this act.

Approved, August 1, 1892.

12112 W. D. JBH

WAR DEPARTMENT,
Washington, February 28, 1907.

SIR: 1. With reference to the importance, from the point of view of this Department, of a speedy decision by the United States Supreme Court of one or more of the cases arising under the national eight-hour law which, it is understood, have reached or soon will reach that court, I have the honor to submit the following statement of facts:

2. On July 14, 1906, by the authority of the President, it was ordered "that it is the duty of the officers of the War Department, in respect to Government contracts which are performed under their supervision, and for the performance of which they are responsible, to use the powers they have to prevent violations of the law, and especially the Federal law, by contractors for the work which comes under their supervision," and that those powers should be actively employed, which was followed by an Executive order dated September 19, 1906, to the same effect. Prior to that time it had been held by the War Department that officials representing the Department who enter into contracts on behalf of the United States are not

charged with the duty of enforcing the law with reference to those with whom they contract, the latter being directly responsible in the matter. In an opinion of Attorney-General Miller (20 Opin. Atty. Gen., 459) it was also held that certain employees of the United States, the nature of whose employment is peculiar, might well be held to be, as a matter of fact, neither laborers nor mechanics within the meaning of the eight-hour law, such as sailors or others on shipboard, or teamsters. This ruling was interpreted by this Department to include engineers, firemen, seamen (embracing dredge employees), watchmen, messengers, teamsters, etc.

3. Since the issuance of the above-mentioned Executive order, and because the interpretation above referred to was questioned in certain cases, attempts to readjust the classification of employees in the Department at large under the law have, in view of the somewhat meager legal decisions, been extremely difficult, especially in the case of dredge employees. It is very desirable that the embarrassment of the Department in this respect be relieved at the earliest date practicable by a decision of the Supreme Court as to the application of the statute to the various classes of employees, private and public.

4. What is regarded, however, as the most urgent reason for an early decision of the questions involved in the enforcement of the eight-hour law is the matter of the additional expense to the United States resulting from an illiberal interpretation and enforcement of the law, not only because of the necessity for the employment of more men where the Government is doing its own work, but on account of the increased prices for contract work let subsequent to the Executive order of September 19, 1906.

5. *One of the classes of Government work which forms a large proportion of that which is intrusted by Congress to the War Department for execution is the improvement of rivers and harbors, which involves principally dredging operations and lock and dam construction. The question of whether the law applies to dredging operations, as above stated, is very much in doubt, and is one which, in the interests of the United States, should be settled before the work directed by the new river and harbor act is advertised. This act appropriates and authorizes approximately $87,000,000, of which about 80 per cent is covered by the continuing-contract method. Continuing contracts are usually made effective until the projected works are completed, requiring from two to ten or more years. In view of the uncertainty as to the applicability of the eight-hour law to so large a proportion of river and harbor work, and to the great saving to the Government through the increased purchasing power of the money appropriated if it should be held that the law does not apply to dredging operations, it is greatly desired that the decision of the Supreme Court in the cases before it be handed down at an early date.*

6. *The matter is considered to be so important that it is my purpose, if the court will advance the date of hearing and indicate its intention to render its decision before the adjournment of the present term, to withhold advertisement of the work covered by the new river and harbor act, so far as it can be safely done (at least that portion under the continuing-contract system), until the decision is known.*

Very respectfully,

WM. H. TAFT,
Secretary of War.

The honorable the ATTORNEY-GENERAL.